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**Attorneys for Defendant
Peter L. Jensen**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PETER L. JENSEN AND THOMAS C.
TEKULVE, JR.,

Defendants.

CASE NO. CV11-05316 R (AGRx)
[Assigned to Hon. Manuel L. Real]

**DEFENDANT PETER L. JENSEN'S
NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: September 17, 2012
Time: 10:00 a.m.
Crtrm.: 8

Trial Date: October 16, 2012

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendant Peter Jensen, by his undersigned
3 counsel, on September 17, 2012 at 10:00 a.m. in Courtroom 8 of the United States
4 District Court for the Central District of California, Central Division, 312 N. Spring
5 St., Los Angeles, CA 90012, or at such other time and place as the Court may direct,
6 will and hereby does move this Court for an order granting Mr. Jensen's Motion for
7 Partial Summary Judgment.

8 This Motion for Partial Summary Judgment is made under Federal Rule of
9 Civil Procedure 56 and Local Rule 56-1, and seeks partial summary judgment in Mr.
10 Jensen's favor on the following claims and remedies asserted by Plaintiff the
11 Securities and Exchange Commission ("SEC"):

12 1. The First Cause of Action, Violation of Section 17(a)(1) of the Securities
13 Act of 1933 ("Securities Act"), as it pertains to the VLC and WSS transactions;

14 2. The Second Cause of Action, Violations of Section 10(b) of the Securities
15 and Exchange Act of 1934 ("Exchange Act") and Rule 10(b)(5), as they pertain to
16 the VLC and WSS transactions;

17 3. The Third Cause of Action, Violations of Section 13(a) of the Exchange
18 Act and Rule 12b-20, 13a-1 and 13a-13, as it pertains to the aiding and abetting
19 liability for the VLC and WSS transactions;

20 4. The Second and Third Causes of Action, Violations of Section 20(a) of the
21 Exchange Act, as they pertain to the VLC and WSS transactions;

22 5. The SEC's remedies of disgorgement and of Sarbanes-Oxley Act Section
23 304 reimbursement as applied to proceeds of the sale of Basin Water stock by Mrs.
24 Jensen;

25 6. The SEC's remedy of disgorgement against Mr. Jensen for all proceeds
26 realized from sale of Basin Water stock, regardless as to whether any portion of the
27 proceeds realized was inflated by the alleged misrepresentations, if any; and
28

1 7. The Seventh Cause of Action, Violation of Section 304, against Mr. Jensen
2 for reimbursement of proceeds from the sale of Basin Water stock.

3 The SEC's claims and remedies against Mr. Jensen, which are the subject of
4 this motion, are asserted under: (1) Section 17(a) of the Securities Act, 15 U.S.C.
5 §77q(a); (2) Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b) and §78t(a), SEC
6 Rule 10b-5, 17 C.F.R. § 240.10b-5; (3) Section 13(a) of the Exchange Act, 15
7 U.S.C. § 78m(a), and SEC Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§ 240.12b-
8 20, 240.13a-1, and 240.13a-13; (4) Section 304 of the Sarbanes-Oxley Act, 15
9 U.S.C. §§7243(a)(1) and 7243(a)(2); and (5) caselaw concerning disgorgement
10 remedies and calculations.

11 As more fully explained in Mr. Jensen's accompanying memorandum of
12 points and authorities, the SEC cannot meet its burden of establishing a genuine
13 issue for trial on the foregoing claims. The SEC's claims fail for a variety of
14 reasons, including, *inter alia*, that (a) there is no evidence that Mr. Jensen had any
15 scienter as to the VLC and WSS transactions; (b) there is no evidence that Mr.
16 Jensen was a control person of Basin Water during the WSS and VLC transactions;
17 (c) even if the SEC could prevail at trial, the SEC is not entitled to proceeds from
18 sales of Lorna Jensen's Basin Water shares; (d) the SEC is not entitled to an order
19 disgorging all of the proceeds realized by Mr. Jensen from the sale of his Basin
20 Water stock; and (e) there is no evidence that Mr. Jensen realized any profits from
21 the sale of his Basin Water stock that are subject to reimbursement under Section
22 304 or, in the alternative, that any reimbursement must be limited to, at most, the
23 inflation of any proceeds realized by Mr. Jensen that was caused by the alleged
24 misrepresentations.

25 This motion is based on this Notice and Motion for Partial Summary
26 Judgment, the Memorandum of Points and Authorities in support thereof, the
27 Statement of Uncontroverted Facts and Proposed Conclusions of Law, the Request
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1 for Judicial Notice, the Declaration of Peter L. Jensen, the Declaration of Keith R.
2 Solar and the exhibits attached thereto, the Declaration of David C. Scheper and the
3 exhibits attached thereto, and such further evidence and argument as the Court may
4 deem appropriate.

5 DATED: August 20, 2012

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10 By: /s/ David C. Scheper
11 David C. Scheper
12 Attorneys for Defendant Peter L. Jensen
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